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Executive Report

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THE WHITE HOUSE

WASHINGTON

NOV 7 1974

MEMORANDUM FOR

THE SECRETARY OF STATE
THE SECRETARY OF TREASURY
THE SECRETARY OF DEFENSE
THE SECRETARY OF AGRICULTURE
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF INTERIOR
THE SECRETARY OF TRANSPORTATION
THE ADMINISTRATOR, ENVIRONMENTAL PROTECTION
AGENCY
THE ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION
THE CHAIRMAN, ATOMIC ENERGY COMMISSION
THE CHAIRMAN, CIVIL AERONAUTICS BOARD
THE CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION
THE CHAIRMAN, FEDERAL MARITIME COMMISSION
THE CHAIRMAN, FEDERAL POWER COMMISSION
THE CHAIRMAN, FEDERAL RESERVE BOARD
THE CHAIRMAN, FEDERAL TRADE COMMISSION
THE CHAIRMAN, INTERSTATE COMMERCE COMMISSION
THE CHAIRMAN, SECURITIES AND EXCHANGE COMMISSION

FROM: Roy L. Ash, DIRECTOR, OFFICE OF MANAGEMENT & BUDGET
W. D. Eberle, EXECUTIVE DIRECTOR, CIEP

SUBJ: Interagency Review of Current Federal Government
Reporting Requirements with Respect to Foreign
Investment in the United States

On October 28, the President signed The Foreign Investment Study Act of 1974, which directs the Departments of Commerce and Treasury to conduct a comprehensive study of foreign investment in the United States. An interim report will be issued in one year and the final report is due in 18 months.

There is, however, a widespread immediate concern in the Congress regarding foreign investment in the United States and the adequacy of Federal data-collection activities in this area. Reflecting this concern, Senator Metzenbaum has

introduced S. 3955, which would establish a reporting system requiring foreigners to disclose publicly a greater amount of information about their investments in the U.S. than is presently provided. Hearings on the bill were held in the Senate in September and are contemplated on a similar bill (H.R. 17270) in the House after the recess.

The Federal Government already collects a significant amount of data on foreign investment, which if improved and made public in a manner designed to protect justifiable confidentiality interests would go a long way toward satisfying Congressional and public desires for better information on foreign investment. Therefore, the Administration is opposing the imposition of any additional reporting requirements on foreign investment in the United States until a thorough study has been made of the adequacy of existing capabilities.

Because of the urgency of Congressional and public interest in this area, we have decided to undertake on an accelerated basis a review of Federal Government foreign-investment data-collection activities, which constitutes a portion of the overall review required by the Foreign Investment Study Act of 1974. This accelerated review will be coordinated by the existing CIEP Interagency Task Force on Foreign Investment in the United States, which will work closely with personnel from Commerce and Treasury assigned to complete the overall foreign investment study. We plan to complete a report in February 1975 that will include findings and recommendations for any necessary improvements.

The initial step will be to survey our existing reporting requirements and disclosure policies. Accordingly, we are hereby requesting that each Government agency that now collects information dealing with (1) foreign investment in the United States, (2) the identity of investors (domestic and foreign) in companies under their regulatory jurisdiction, or (3) foreign investment in sectors of the U.S. economy in which such investment is restricted or prohibited by statute, to furnish a comprehensive, detailed statement of its existing reporting regulations and procedures. Annex I (attached) outlines the specific information that should be included in this report.

We are aware that in early 1973 the GAO prepared a report on the reporting requirements of seven regulatory agencies for Senator Metcalf entitled "Reporting Requirements and Dissemination of Information on Corporate Ownership and Structure." To avoid duplication of effort, those agencies that contributed information

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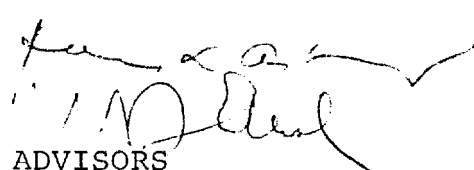
for that report should build on their respective submissions -- updating as necessary and noting the extent to which foreign investors (Government, as well as private) are (or could be) specifically identified.

Because of the probability of House hearings on this subject shortly after the recess, these reports should be submitted by November 22 to Gene Clapp of the CIEP staff. We would appreciate it if each agency would immediately designate a staff contact to facilitate communications in connection with the study. Any questions on this request can be directed to Mr. Clapp (456-6597) or to Mr. John Huhs (395-3720), OMB.

Attachment

Information copies:

THE ATTORNEY GENERAL
THE CHAIRMAN, COUNCIL OF ECONOMIC ADVISORS
ASSISTANT TO THE PRESIDENT FOR
NATIONAL SECURITY AFFAIRS
ASSISTANT TO THE PRESIDENT FOR
ECONOMIC AFFAIRS
THE DIRECTOR, CENTRAL INTELLIGENCE AGENCY

Handwritten signature and initials, possibly "J. Huhs" and "J. Clapp", with a checkmark.

ANNEX I

Outline of Information Which Should be Included in Report
on Reporting and Disclosure Requirements
re Foreign Investments in the United States

A. Description of Existing Data-Collection Activities.

1. Describe each and every data-collection or dissemination activity pursued by the agency regarding information on investors and investment. Describe specific purpose for which the information is collected. Describe any special agency procedures or efforts specifically designed to identify foreign investments in the United States or foreign investors. Describe the extent to which the agency is able from the information collected (a) to distinguish between domestic and foreign investments or investors; (b) to determine the nationality of foreign investors; and (c) to prepare a list of foreign investments or investors.

2. Cite the precise legal basis for each activity and supply copies of all relevant statutes and reporting forms. Be sure to include:

a. All laws, rules, regulations, or other procedures that require reporting of information as to the identity, location, and/or nature (i.e., beneficial vs. record owner) of (1) shareholders (or partners) of U.S. corporations (or firms); (2) the holders of short- and long-term debt of U.S. corporations; and (3) holders of real estate.

b. Any laws, rules, regulations, or other procedures that establish special reporting requirements (in addition to the general requirements in a above) for (1) foreign investors in general and/or (2) foreign governments or government-controlled institutions.

3. Describe the enforcement powers (e.g., penalties, subpoena, or injunctive powers) to ensure compliance with each data-collection activity.

4. Describe the extent of voluntary compliance under the laws, rules, regulations, and procedures cited in 2 above and the extent to which enforcement powers are used. Cite examples of cases in which abuse or neglect of reporting requirements may have occurred and/or where existing enforcement powers have been used to ensure compliance.

5. Describe the confidentiality requirements and other restrictions on the use of information collected under each data-collection activity. Cite relevant statutes and/or administrative regulations.

6. Describe the extent to which information collected under each data-collection activity is made available to the public; include sample copies of the reports or other publications in which the data collected is made public.

B. Desirable Improvements in Data-Collection Activities.

1. Identify specific additional information on foreign investment and/or investors that the agency needs. Identify gaps in the scope or coverage of reporting for existing data-collection activities (e.g., extent of exceptions or exemptions), and describe any new activities that should be undertaken. Describe the uses to which the additional information will be put.

2. Identify any superfluous existing data-collection activities and explain why they are superfluous. For example, some data requirements may no longer contribute to the agency's needs to accomplish its mission.

3. Describe any factors that make it difficult or impossible to determine the true identity of the foreign beneficial owner who ultimately receives the dividends and/or exercises the voting rights (especially in cases where foreign nominees are used).

4. Describe and explain any desirable changes in laws, rules, regulations, or other procedures (including enforcement powers) that would help correct any data-collection deficiencies identified under 1, 2, and 3 above, or that would be necessary, in your view, to improve the program of your agency relating to the collection and disclosure of information dealing with foreign investment in the United States. Include:

a. Changes which could be made administratively in existing regulations or reporting forms.

b. Additional legislative authority (either by amendment to existing laws or totally new legislation).

C. Compliance with Existing Laws Restricting Foreign Investment in the United States.

1. List the laws restricting or otherwise limiting foreign investment in the United States administered by your agency (see Annex II for a checklist).

2. Describe the procedures used by your agency to ensure compliance with these laws.

3. Identify and explain any legislative or administrative changes that are necessary to ensure compliance.

D. Explanatory Note.

As we noted in our transmittal memorandum, this Annex is designed to elicit information on existing regulations that apply to foreign investors. We will use this information as a basis for identifying any deficiencies in these regulations and for attempting to devise possible means to correct them.

Our principal concern in this review will be to determine:

1. The extent to which existing reporting requirements yield adequate information on foreign investment in general and more particularly as to (a) the true identity of the ultimate beneficial owner of foreign-owned shares of U.S. corporations and (b) foreign ownership of real estate; and

2. What means we might propose (e.g., revision of existing statutes and/or regulations or enactment of new ones) to strengthen our capability to obtain and disclose such information.

In our preliminary investigations, we have already identified some aspects of our existing reporting requirements that we think deserve attention. They are:

1. Lack of data re investment in real estate.

2. The difficulty in determining the identity of the foreign party (or parties) who ultimately receive dividends and/or exercise the voting rights in cases where securities are held by a nominee or in a street name, and

3. Confidentiality requirements which limit public disclosure of data collected by Government.

I. General Restrictions on Foreign Controlled Enterprises

Foreign controlled enterprises operating in the United States, whether in branch or subsidiary form, may not:*

(a) engage in operations involving the utilization or production of atomic energy (42 USC 2133(d))

(b) own vessels which transport merchandise or passengers between U.S. ports, or which tow U.S. vessels carrying such merchandise or passengers between U.S. ports. (46 USC 802, 883, 888) There are exceptions to this general rule, one of which permits a foreign controlled U.S. manufacturing or mining company to engage in shipping activities related to its principal business. (46 USC 883-1)

(c) acquire rights of way for oil pipe-lines, or leases or interests therein for mining coal, oil or certain other minerals, on federal lands other than the outer continental shelf, if the foreign investor's home country does not permit such mineral leasing to U.S. controlled enterprises (30 USC 181, 185; 43 CFR 3300.1)

(d) engage in radio or television broadcasting, unless the Federal Communications Commission finds the grant of a license to be in the public interest (47 USC 310) (The FCC has granted licenses for broadcasting activities ancillary to another business of a foreign controlled enterprise.)

(e) acquire a controlling interest in a telegraph company (47 USC 222(d))

(f) acquire control of a company engaged in any phase of aeronautics, unless approval is granted by the Civil Aeronautics Board (49 USC 1301(1), (13); 78A(4); (1378(f))

(g) be issued permits for intra-United States air commerce or navigation (49 USC 1371, 1401(b), 1508)

(h) obtain special government loans for the financing or refinancing of the cost of purchasing, constructing or operating commercial fishing vessels or gear (16 USC 742(c)(7))

(i) sell obsolete vessels to the Secretary of Commerce in exchange for credit towards new vessels (46 USC 1160(b))

(j) receive a preferred ship mortgage (46 USC 922)

*In certain cases foreign enterprises can acquire a minority interest in corporations engaging in the activities noted but certain conditions may have to be met. (Cf. Sec. II)

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(k) purchase vessels converted by the government for commercial use or surplus war-built vessels at a special statutory sales price (50 USC App. 1737, 1745).

(l) obtain special government emergency loans for agricultural purposes after a natural disaster (7 USC 1961) or government loans to individual farmers or ranchers to purchase and operate family farms (7 USC 1922, 1941)

(m) establish an Edge Act corporation to engage in international or foreign banking (12 USC 619)*

(n) purchase Overseas Private Investment Corporation insurance or guarantees (22 USC 2198(c))

(o) obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 USC 1151 ff., 1171 ff., 802)

(p) acquire or charter, without the approval of the Secretary of Commerce, U.S. flag vessels, vessels owned by a U.S. citizen, or shipyard facilities (46 USC 835)

(q) acquire the controlling interest in corporations owning the vessels or facilities described in (p) above (46 USC 835)

(r) obtain war-risk insurance for aircraft (49 USC 1531, 1401)

* In addition to its limitations on stock ownership by foreign enterprises, the Edge Act requires that all the directors of the corporation be United States citizens.

In certain cases a foreign controlled enterprise operating in the United States must meet certain requirements relating to management in order to engage in particular activities. The foreign investor, however, can continue to own all the equity in the enterprise, because the laws in question do not contain limitations relating to stock ownership. Unless these management requirements are met, foreign controlled enterprises may not:

(a) organize a national bank (all the directors must be United States citizens) (12 USC 72)

(b) engage in dredging or salvaging operations in U.S. waters. (To register a vessel to engage in these activities, the President or chief executive officer of a domestic corporation, and the chairman of its board, must be U.S. citizens, and foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum). (46 USC 316, 11)*

(c) fish in the territorial waters of the United States, land fish caught on the high seas, and, except for corporations of countries with traditional fishing rights), fish in the United States fishing zone. (See (b) above for the management requirements.) (16 USC 1081, 1091; 46 USC 231)*

(d) transport certain commodities procured by or financed for export by the United States government or an instrumentality thereof. (See (b) above for the management requirements.) There are certain statutory exceptions to this rule. (15 USC 616(a); 46 USC 1241)

(e) obtain certain types of vessel insurance. (See (b) above for the management requirements.) (46 USC 1281 ff.)

(f) obtain licenses to operate as customs-house brokers (19 USC 1641) (At least two of the officers must be U.S. citizens.)

* To the extent that these activities involve the coast-wise trade, certain limitations on stock ownership would have to be met. (Cf. Sec. I)

III. Restrictions Applicable to Foreign Branches or Individuals

In certain cases the form of business organization chosen by a foreign controlled enterprise will determine whether it will be treated differently from an enterprise controlled by United States citizens. If a foreign controlled enterprise chooses to operate through a sole proprietorship or a branch office, rather than a corporation organized under the laws of one of the states, it may not:

(a) obtain licenses to construct dams, reservoirs, power houses, and transmission lines (16 USC 797(e))

(b) obtain licenses to develop and utilize geothermal steam and associated resources on federal lands (30 USC 1001 ff.).

(c) obtain certain rights of way, mining rights, leases, or other rights on federal lands (See generally 43 CFR Subchapters A & D)

These restrictions would not apply if the foreign controlled enterprise operated through a domestic subsidiary.

In addition to restrictions previously noted, foreign citizens may not:

(a) act as officers and serve in certain other positions on certain vessels (Cf. 46 USC 221)

(b) function as operators in radio or television stations (47 USC 303(1))

(c) practise before the Tax Court or the Court of Claims (Tax Court Rules, 2; Court of Claims Rules, 201)